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Honorable Joseph B. Morton
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Education, Department of – Postsecondary
Education, Department of – Private Schools –
Licenses and Permits

Pursuant to the plain language of the pertinent statutes and the legislative intent and purpose of section 16-60-115 of the Code of Alabama and other pertinent Code provisions, the Department of Postsecondary Education and its Chancellor have the responsibility and authority to license driver training schools under the Driver Training School License Act ("Driver School Act").

Dear Dr. Morton:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Has the Driver Training School License Act been effectively transferred to the province of the Alabama Department of Postsecondary Education and its Chancellor pursuant to section 16-60-115 of the Code of Alabama or any other relevant provision?

FACTS AND ANALYSIS

The answer to this question is best derived from a proper understanding of the context in which the Alabama Legislature enacted the pertinent statutes. In 1963, the Alabama Legislature enacted the Alabama Trade School and Junior College Authority Act ("Trade School Act"). ALA. CODE §§ 16-60-80 to 16-60-

96 (2001). The Trade School Act defined a trade school as “[a]n educational institution offering instruction primarily in useful trades, occupations or vocational skills.” ALA. CODE § 16-60-81 (2001). At that time, the State Board of Education and the State Superintendent were responsible for the administration of trade schools and junior colleges. See 1963 Ala. Acts No. 94, 268 (establishing the State Board of Education and the State Superintendent with control and responsibility to regulate trade schools and junior colleges) & ALA. CODE § 16-60-114 (2001) (enacted in 1982 and transferring “the authority, powers and duties . . . relating to the Alabama Trade School and Junior College Authority Act . . . to the [Postsecondary Education Department] Chancellor and expressly remov[ing them] from the State Superintendent of Education . . .”).

In 1967, the Alabama Legislature enacted the Driver Training School License Act, which is codified at sections 32-14-1 to 32-14-24 of the Code. The Driver School Act defined “driver training schools” as “[a]ny person, partnership or corporation giving driving instructions to 10 or more persons per calendar year for the purpose of meeting requirements for licensed driving of motor vehicles in Alabama.” ALA. CODE § 32-14-2(2) (1999). The Driver School Act also states that “[n]o person shall operate a driver training school . . . unless a license therefor has been secured from the superintendent [of the State Department of Education].” ALA. CODE § 32-14-20 (1999). The Driver School Act further provides that the chapter “shall not apply to an accredited grade school, high school, junior college, or college conducting a driver training course, nor shall it apply to driver improvement schools or programs operated by the American Association of Retired Persons or any affiliate thereof, or this state or a municipality thereof.” ALA. CODE § 32-14-5 (1999).

After the Driver School Act was passed, the Legislature defined a private school, for purposes of chapter 46 of title 16 of the Code of Alabama, as the “[o]peration of either profit or nonprofit entity as opposed to publicly owned or operated schools.” ALA. CODE § 16-46-1(3) (2001). That same chapter defines license as “[a] private school license identifying the name and location of the school and establishing the courses which may be offered thereunder.” ALA. CODE § 16-46-1(5) (2001). A school is defined as “[a]ny person, group of people, institution, establishment, agency, or organization offering or administering a plan, course, or program of instruction whether conducted in person, by mail, or by any other method.” ALA. CODE § 16-46-1(2) (2001).

In 1982, the Alabama Legislature amended the Trade School Act when it created the Alabama Department of Postsecondary Education. The amendments to the Trade School Act included transferring all the “authority, powers and duties” regarding trade schools and junior colleges that had previously pertained to the State Superintendent of Education to the Chancellor (also known as the Chief Executive Officer of the Postsecondary Education Department). See ALA. CODE § 16-60-111.1 (2001)). Those 1982 amendments also placed “the direction and supervision of junior colleges and trade schools” with the

Postsecondary Education Department, "a parallel organization to the State Department of Education directly responsible to the State Board of Education" ALA. CODE § 16-60-110 (2001).

Subsequently, in 2002, the Alabama Legislature again amended the Trade School Act to require the State Board of Education to transfer "[a]ll powers, duties, responsibilities, and functions of, and all related records, property, equipment of, and all rights, obligations of . . . the Adult Education program, the State Approving Agency program, and the Private School Licensure program for postsecondary proprietary schools" from the State Department of Education to the Postsecondary Education Department. ALA. CODE § 16-60-115(a) (Supp. 2007). Those amendments also provide that the "Private School Licensure program for postsecondary proprietary schools shall be transferred from the State Department of Education to the Postsecondary Education Department pursuant to this section." ALA. CODE § 16-60-115(i) (Supp. 2007). The Alabama Legislature further instructed the State Superintendent of Education and the State Department of Education to assist the Chancellor and the Postsecondary Education Department "with the highest degree of cooperation to carry out the intent and purpose of this section." ALA. CODE § 16-60-115(f) (Supp. 2007). In addition, the State Board of Education and the State Superintendent of Education are required to take all administrative action "appropriate and necessary to carry out the intent and purpose of this section." ALA. CODE § 16-60-115(j) (Supp. 2007).

In 2004, the Alabama Legislature amended portions of the Trade School Act, including section 16-46-5 of the Code. Before those changes, section 16-46-5 provided, in part, as follows:

(a) *No school*, except those enumerated in Section 16-46-3, shall operate within this state unless said school first secures a license from the *Alabama State Department of Education*. Procedures for licensing and bonding of schools operating courses in separate locations shall be established in the rules and regulations pursuant to Section 16-46-7.

ALA. CODE § 16-46-5 (2004) (emphasis added). That subsection now provides as follows:

(a) *No proprietary postsecondary school*, except those enumerated in Section 16-46-3, shall operate within this state unless the school first secures a license from the *Alabama Department of Postsecondary Education*, regardless of whether the school enrolls Alabama students or has a physical presence within the State of Alabama. Procedures for licensing and bonding of schools operating courses in separate

locations shall be established in the rules and regulations pursuant to Section 16-46-7.

ALA. CODE § 16-46-5 (Supp. 2007) (emphasis added).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Advertiser Co. v. Hobbie*, 474 So. 2d 93 (Ala. 1985). When interpreting a statute, it must be considered as a whole and must be construed reasonably so as to harmonize all of its provisions. *McRae v. Security Pac. Hous. Serv., Inc.*, 628 So. 2d 429 (Ala. 1993). Moreover, the Legislature, in enacting a statute, is presumed to have full knowledge and information as to the prior and existing law and legislation on the subject of the statute. *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So. 2d 293 (1998); *Miller v. State*, 349 So. 2d 129 (Ala. Crim. App. 1977).

In the construction of statutes, legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Shelton v. Wright*, 439 So. 2d 55, 57 (Ala. 1983). When possible, the intent of the Legislature should be learned from the language of the statute itself. *Volkswagen of America, Inc. v. Dillard*, 579 So. 2d 1301, 1305 (Ala. 1991). In construing statutes, courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001); *Wal-Mart Stores, Inc. v. Patterson*, 816 So. 2d 1, 6 (Ala. 2001); *Ex parte S.C.W.*, 826 So. 2d 844, 850 (Ala. 2001).

Also, when determining legislative intent, courts may look to the history of the statute. *Bowlin Horn v. Citizens Hosp.*, 425 So. 2d 1065, 1070 (Ala. 1982) and related statutes; *James v. McKinney*, 729 So. 2d 264, 267 (Ala. 1998). Where more than one Code section is involved, each should be construed in harmony with the other Code sections in effect, so far as is practical. *Kinard v. Jordan*, 646 So. 2d 1380, 1383 (Ala. 1994). In cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986). Additionally, when a statute may be given two different reasonable constructions, courts apply the construction that will uphold, and not defeat, the legislative will. *Id.*

Section 16-60-115 of the Code transferred the private school licensure program for postsecondary schools from the Department of Education to the Postsecondary Education Department. "Postsecondary proprietary schools," however, are not explicitly defined in the Code of Alabama. Therefore, one must determine the Legislature's intent by the language in the pertinent statutes and by the history and context of those statutes with other Code sections.

Dillard, 579 So. 2d at 1305; *Horn*, 425 So. 2d at 1070; *James*, 729 So. 2d at 267.

“Propriety” is defined as “[p]rivately owned possessions; property.” BLACK’S LAW DICTIONARY 1256 (8th ed. 2004). The Driver School Act applies only to the licensure of private or “proprietary” schools. ALA. CODE § 32-14-5 (1999) (stating that the Driver School Act “shall not apply to an accredited grade school, high school, junior college, or college conducting a driver training course, nor shall it apply to driver improvement schools or programs operated by . . . this state or a municipality thereof”). Significantly, the Adult Education program (pertaining to a variety of non-K-12 education programs) and the Agency Approving program (pertaining to programs for veterans and other eligible individuals using their G.I. Bill Education Benefits) were also transferred to the Postsecondary Education Department. ALA. CODE § 16-60-115 (Supp. 2007). Because driver schools are more in the nature of adult or postsecondary education than K-12 education, and because the Driver School Act only applies to nonaccredited proprietary schools, it appears that the Alabama Legislature would have understood the licensing of driver schools to be included within the definition of the “Private School Licensure program for postsecondary proprietary schools.” *Id.*

Furthermore, the Driver School Act was enacted before the creation of the private school licensure program, before the creation of the Postsecondary Education Department, and before the transferral of the responsibilities of the private school licensure program from the Department of Education to the Postsecondary Education Department. If the intent of the Alabama Legislature to transfer all non-K-12 programs from the Department of Education to the Postsecondary Education Department was not clear in 2002 when it enacted section 16-60-115, then it clarified and reiterated that intent in 2004 when it amended section 16-46-5. Section 16-46-5 had previously been unchanged since 1980--before the creation of the Postsecondary Education Department in 1982. Because the language in section 16-46-5 once required the Department of Education to license all schools, it is clear that the Department of Education once had the responsibility for licensing postsecondary proprietary schools under that section.

Consistent with this view of the Legislature’s intent is the fact that a driver training school is a “trade school” in the sense that it is “[a]n educational institution offering instruction primarily in useful trades, occupations or vocational skills.” ALA. CODE § 16-60-81(7) (2001). Although driver schools under the Driver School Act are distinguishable from trade schools because they are private as opposed to public institutions, the responsibility of managing trade schools was transferred to the Postsecondary Education Department and its Chancellor in 1982. *See* ALA. CODE § 16-60-111.1 & § 16-60-110 (2001).

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Despite language in the Driver School Act that references the Department of Education and the State Superintendent of Education, the Postsecondary Education Department has the responsibility and authority for complying with the requirements of the Driver Training Act because that is the intent of the Alabama Legislature, and because the latest expression of the Legislature is the law. *Jenkins* at 588. This understanding of the Legislature's intent is based upon a contextual reading of multiple statutes that were enacted over the course of over two decades. Those laws have increasingly established the Postsecondary Education Department or its Chancellor as the state agency or official responsible for the regulation of adult education (outside of four-year universities) in this state.

Given the plain language of the recent pertinent statutes, the context of their enactment, and the intent and purpose of the Alabama Legislature, the licensing of driver training schools under the Driver School Act is a responsibility of the Postsecondary Education Department and its Chancellor.

CONCLUSION

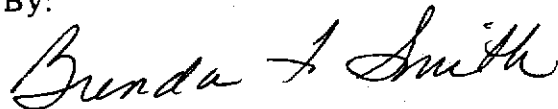
Pursuant to the plain language of the pertinent statutes and the legislative intent and purpose of section 16-60-115 of the Code and other pertinent Code provisions, the Department of Postsecondary Education and its Chancellor have the responsibility and authority to license driver training schools under the Driver Training School License Act.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/JRW

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